

Philip Hixon

From: Xidis, Claire [cxidis@motleyrice.com]
Sent: Thursday, December 11, 2008 10:27 AM
To: Philip Hixon
Cc: Ward, Liza
Subject: RE: Peterson Financial Information
Attachments: 2002-05-03 Order.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Phillip,
I am writing to follow up on our conversation on Tuesday regarding the financial information we still need from Peterson. Several times during our call you asked for legal authority supports our request for more than balance sheets. After our call, I re-reviewed the City of Tulsa order that addresses discovery of financial information, and noted that it specifically ordered the production of "financial statements," not just balance sheets. I am attaching a copy for your convenience.

A financial statement consists of three parts - a balance sheet, an income statement, and a statement of cash flow. As I explained during our initial meet and confer a few weeks ago, we need information that explains the company's income as well as its assets, and this is not reflected in what you have provided. This is information, and any notes or disclosures that accompanied the balance sheets and financial statements are information we need to determine Peterson's financial condition.

Please produce these materials to us as soon as possible.

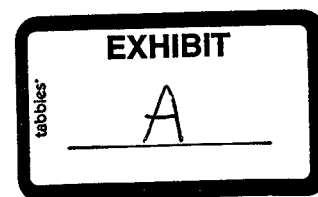
Thank you,

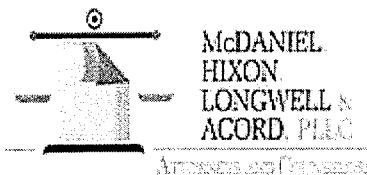
Claire Xidis | Attorney at Law | Motley Rice LLC
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Philip Hixon [mailto:phixon@mhla-law.com]
Sent: Monday, December 08, 2008 5:17 PM
To: Xidis, Claire; Ward, Liza
Cc: Scott McDaniel; Jinger Waller
Subject: RE: Peterson Financial Information

Claire:
The 11AM time works better for me as well. I will let you initiate the call.

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From: Xidis, Claire [mailto:cxidis@motleyrice.com]
Sent: Friday, December 05, 2008 4:29 PM
To: Philip Hixon; Ward, Liza
Cc: Scott McDaniel; Jinger Waller
Subject: RE: Peterson Financial Information

Hi Phillip,

As we discussed during our meet and confer about this financial information, we would review the financial information that you produced last Wednesday, and if it did not include all of the information about Peterson's financial condition that we needed, we would regroup about this issue. We have reviewed the production from last week, and there is some additional information that is needed to assess Peterson's financial condition. The statements you produced were redacted, and we need to understand what is missing and how that impacts the net worth of Peterson. That is what Liza is following up with you about below.

In regard to your Dec. 4 letter to me about Peterson's 2008 financial information and our proposed agreement, let's discuss that next week when we talk.

I suggest we set up a time to talk on Tuesday morning. I have a call at 9:00 Central that morning, so perhaps we could do this at 11:00 am central on Tuesday?

Thank you,

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From: Philip Hixon [mailto:phixon@mhla-law.com]
Sent: Friday, December 05, 2008 4:14 PM
To: Ward, Liza
Cc: Xidis, Claire; Scott McDaniel; Jinger Waller
Subject: RE: Peterson Financial Information

Elizabeth:

I have received your email. I will be in the office on Tuesday and Thursday if you wish to discuss these matters. In the interim, I will refer you to Peterson Farms' responses and objections to Plaintiffs' RFPs seeking financial information. They set forth our position on your request, and they have gone unchallenged for an appreciable time. Given that extended silence, I am at a loss as to understand the basis for your present position, now, on the eve of the deadline for Plaintiffs' damage reports. We have produced what we said we would produce in the RFPs, and we have recently supplemented that production.

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From: Ward, Liza [mailto:lward@motleyrice.com]
Sent: Friday, December 05, 2008 11:06 AM
To: Philip Hixon
Cc: Xidis, Claire
Subject: FW: Peterson Financial Information

This email just bounced back to me, so I am uncertain whether you received it. Please confirm receipt and let me know when you can discuss. Thanks.

Elizabeth "Liza" C. Ward | Attorney at Law | Motley Rice LLC
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | lward@motleyrice.com
o. 843 216-9280 | c. 843 834 2514 | f. 843.216.9450

From: Ward, Liza
Sent: Thursday, December 04, 2008 9:52 AM
To: Philip Hixon
Cc: Xidis, Claire
Subject: Peterson Financial Information

Dear Philip,
The State of Oklahoma's retained economist has reviewed the financial materials that you provided last week and has determined that they do not provide sufficient information for his analysis. It appears from the notation at the bottom of the pages with Bates Nos. PFIRWP-093419-426 that some information has been redacted. Please provide me with a description of the type of information that has been redacted. In addition, it appears that approximately half of Peterson's assets are tied up in the payables and receivables with affiliated entities. The economist needs to review something reflecting whether those transactions are arms length transactions. He has requested one of the following that reflects this information: (1) tax returns (including all schedules and attachments) for Peterson for the last 5 years; (2) consolidating financial statements for the last 5 years; or (3) audit reports with all attachments and accompanying notes for the last five years. As time is of the essence, please let me know immediately whether Peterson will produce the above-referenced information. Thank you.

Elizabeth "Liza" C. Ward | Attorney at Law | Motley Rice LLC
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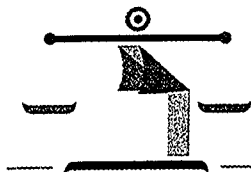
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December 4, 2008

(Via email and U.S. Mail)

Claire Xidis, Esq.
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, South Carolina 29464

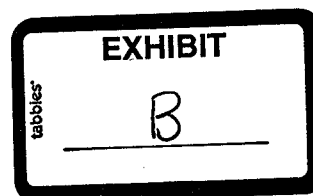
**Re: State of Oklahoma v. Tyson Foods, Inc., et al., Case No. 05-CV-0329
GKF-SAJ, In the U.S. District Court, Northern District of Oklahoma
Letter Agreement - Production of Peterson Farms, Inc.'s Financial
Information**

Dear Claire:

I am writing in response to your email communication of December 2, 2008, inquiring as to whether Peterson Farms, Inc. would agree to allow Plaintiffs' punitive damages expert file a supplemental report after receiving Peterson Farms, Inc.'s fiscal year 2008 balance sheet, which is expected to be available for production sometime in January 2009.

As I have previously stated, Peterson Farms cannot make an agreement for the other Defendants named in the Attorney General's lawsuit. Moreover, Peterson Farms maintains, and Plaintiffs' past practices indicate, that Plaintiffs may seek leave to file a supplemental report, or simply submit a supplemental report, without any agreement between or among the parties. Nonetheless, with regard to Plaintiffs' request, I have consulted our client, and Peterson Farms proposes the following agreement between it and Plaintiffs:

- (1) Plaintiffs' punitive damage expert will be provided an additional twenty (20) days from the date Peterson Farms, through its counsel, produces its fiscal year 2008 balance sheet to submit a supplemental report with regard to Peterson Farms;
- (2) Peterson Farms will be provided an additional twenty (20) days from the date Plaintiffs' punitive damage expert submits the supplemental report to submit a supplemental rebuttal report; and
- (3) Production of fiscal years 2004 through 2007 balance sheets (Bates numbered PFIRWP-093419 through PFIRWP-093426) and the forthcoming fiscal year 2008 balance sheet shall fully satisfy Peterson Farms, Inc.'s obligation to produce financial information and documents pertaining to its net worth.



Page 2 of 2
December 4, 2008

If these terms are acceptable to Plaintiffs, please sign where indicated below and return a copy of the executed Letter Agreement to my attention. Alternatively, if you have any questions regarding the foregoing or should you desire to discuss this matter further, please feel free to contact me at your convenience.

Best regards,

MCDANIEL, HIXON, LONGWELL & ACORD, PLLC


Philip D. Hixon

By the signature below, the State of Oklahoma
accepts the foregoing terms and conditions,

Claire Xidis
Attorney for the State of Oklahoma

cc: A. Scott McDaniel, Esq. (by email)
Nicole M. Longwell, Esq. (by email)

Philip Hixon

From: Philip Hixon
Sent: Monday, November 17, 2008 4:12 PM
To: Xidis, Claire; Scott McDaniel
Cc: Ward, Liza; Jinger Waller
Subject: RE: Oct. 24th Letter

Claire:

As acknowledged in Ms. Ward's letter, Peterson Farms made numerous objections to the RFPs referenced in her October 24 correspondence. Notwithstanding those objections, Peterson Farms previously produced its then most recent balance sheet (PFIRWP-63693). Similarly, in response to Plaintiffs' requested supplement of these RFPs, Peterson Farms can and does agree to produce the balance sheet for its most recent fiscal year, which ended September 30, 2008. However, because of the changes to Peterson Farms' operations and the relocation of its corporate offices, that balance sheet is not expected to be compiled until mid-January 2009.

With regard to the other materials requested in the October 24 correspondence, Peterson Farms stands by the objections made in response to the original RFPs, which have gone unchallenged for over two years now. That said, it is my understanding that Plaintiffs have reached an agreement with George's regarding an acceptable supplement to the referenced RFPs. While we cannot commit in this particular communication to agreeing to the same terms offered by Plaintiffs to George's, we are willing to discuss the terms of the George's agreement with you and present them to Peterson Farms.

I will be in the office the remainder of the week if you care to discuss these matters.

Philip D. Hixon, Esq.

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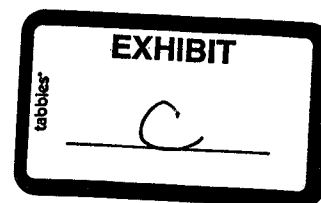
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From: Xidis, Claire [mailto:cxidis@motleyrice.com]
Sent: Monday, November 17, 2008 9:11 AM
To: Scott McDaniel
Cc: Ward, Liza; Philip Hixon; Jinger Waller
Subject: RE: Oct. 24th Letter

Scott-

It's been over three weeks since we sent you the Oct. 24th letter. Are you all planning to produce documents this week? If so, please let me know what you plan to produce. If not, we need to have a meet and confer within the next couple of days. If this is going to be necessary, please let me know some times when you can be available so we can get this scheduled.

Thank you,



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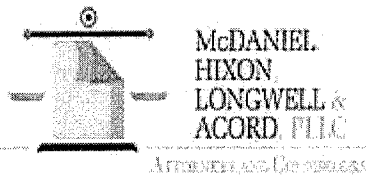
From: Scott McDaniel [<mailto:smcdaniel@mhla-law.com>]
Sent: Wednesday, November 12, 2008 2:16 PM
To: Xidis, Claire
Cc: Ward, Liza; Philip Hixon; Jinger Waller
Subject: RE: Oct. 24th Letter

Claire:

We are not ignoring you. We are still working on clarifying some issues with our client, which will enable one of us to get back to you on a meet and confer schedule.

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From: Xidis, Claire [<mailto:cxidis@motleyrice.com>]
Sent: Wednesday, November 12, 2008 10:54 AM
To: Scott McDaniel
Cc: Ward, Liza
Subject: Oct. 24th Letter

Hi Scott-

I am writing to follow up on a letter Liza Ward sent you on Oct. 24th re: discovery of Peterson's financial information. I do not believe we have heard from you in response. Are you planning to respond? Do we need to schedule a meet and confer?

Liza is in trial, so I am trying to follow up on this issue in her absence. I will be traveling the rest of the week, but you can reach me via email or my cell number below.

Thank you,

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Philip Hixon

Sent: Tuesday, November 25, 2008 3:20 PM
To: 'Xidis, Claire'
Subject: Peterson Farms Supplemental Production
Attachments: 114-004_PF Supp Balance Sheet Production_2004-2007.pdf

Claire:

Please find attached Peterson Farms' supplemental production of documents in response to Elizabeth Ward's October 24, 2008 correspondence. The attached document contains audited balance sheets for fiscal years ending 2004 through 2007. The balance sheets are marked "confidential - attorney eyes only" in accordance with the Protective Order in place in the case and should be treated as such. In addition, nonresponsive information has been redacted from the documents. These documents will be included in our next privilege log.

Peterson Farms will produce the 2008 balance sheet when it is available, which as we previously discussed is expected by no later than mid-January 2009; if it is available prior to the expected date, we will endeavor to produce it at an earlier date. We cannot, however, agree to an extension of Plaintiffs' expert report date. Foremost, Ms. Ward's letter requested a supplemental production of documents, which necessarily presupposes that the requested documents exist. Judge Joyner has also previously ruled that the parties are under no obligation to create documents out of whole cloth in response to discovery requests. As we discussed, there is nothing currently in existence which depicts Peterson Farms' net worth or financial condition after the recent asset sale to Simmons Foods. In short, there is nothing to supplement at this time, but we will supplement the production when there is something to produce. Moreover, as we discussed, Peterson Farms cannot agree to something which may affect the other defendants. Finally, we cannot make an agreement based on speculation as to Plaintiffs' need for the information and the assumption that it will change any opinion held by their experts. Accordingly, should Plaintiffs deem it necessary to supplement their expert reports after the production of the 2008 balance sheet, Plaintiffs are free to seek leave of Court to submit a supplemental report.

Thank you for attention to these matters, and please feel free to contact me if you have any questions regarding the foregoing. Have a happy Thanksgiving holiday.

Philip D. Hixon, Esq.

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